



DEPARTMENT OF DEFENSE  
OFFICE OF THE GENERAL COUNSEL

1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

November 27, 2018

The Honorable Jack Reed  
United States Senate  
Washington, DC 20510

Dear Senator Reed:

This letter is in response to your March 20, 2018, letter regarding U.S. support to Saudi Arabia-led Coalition (SLC) operations against the Houthis in Yemen. I am responding on behalf of Secretary Mattis.

The Department of Defense (DoD) regularly reviews the types of support it provides to the SLC. Recently, the Kingdom of Saudi Arabia (KSA), after consultations with the U.S. Government, decided to use the SLC's own military capabilities to conduct inflight refueling. As of November 11, 2018, we have ceased refueling support to the SLC's counter-Houthi operations in Yemen.

Your letter requested a copy of the required congressional notification for Acquisition and Cross Servicing Agreements (ACSAs) with the KSA and the United Arab Emirates (UAE), which Under Secretary of Defense (USD) for Acquisition and Sustainment Ellen Lord addressed on April 4, 2018, in her interim response.

In addition to the notification USD Lord provided, when an ACSA is concluded and enters into force, the Department of Defense complies with the requirements of the Case Act by notifying Congress, through the Secretary of State, that an agreement has entered into force. Consistent with this procedure, DoD notified the Department of State of the UAE agreement on September 12, 2006. Pursuant to specific language contained in the KSA ACSA, DoD and KSA could provisionally apply the Agreement upon the Parties' signature, which occurred on May 16, 2016; however, also by its own terms, the ACSA does not enter into force formally until the date that KSA provides written notification to DoD that it has fulfilled all of its internal procedures necessary for the Agreement to enter into force. Although DoD and KSA have applied the ACSA provisionally, KSA has not provided the required notice of completion of its internal procedures. Accordingly, DoD has not yet submitted notification to the Department of State of the ACSA's formal entry into force for purposes of the Case Act, but will do so upon KSA's written notice of fulfillment of its necessary internal procedures. The State Department will then provide notification to Congress.

You also requested an explanation and legal justification for the provision of inflight refueling assistance to Coalition aircraft prior to the signing of the 2016 ACSA with KSA, and an accounting of reimbursements by both the UAE and KSA for inflight refueling assistance provided since March 2015. In response to your letter, U.S. Central Command (USCENTCOM)

reviewed its records and found errors in its accounting. Whereas DoD believed that SLC nations, chiefly KSA and UAE, had been charged for the fuel and refueling services, they in fact had not been charged adequately. USCENTCOM is currently calculating the correct charges, and DoD will seek reimbursement from KSA and UAE through their respective ACSA agreements.

To seek reimbursement for past support, DoD will charge the two chief users of the refueling services – KSA and UAE – as Coalition lead nations. For the period from inception of operations in March 2015 through May 31, 2016, the Department will seek reimbursement from UAE for all fuel and tanker flight hours dedicated to the Coalition. For the period of June 1, 2016, through September 30, 2018, the Department will seek reimbursement from KSA for all fuel and flight hours. Fuel provided to nations other than the lead nations during each period is regarded as a third party transfer under the ACSA with the lead nation, meaning that the fuel is charged to the account of the lead nation even though it was delivered to another Coalition nation. Prior to enactment of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 on August 13, 2018, such third party transfers could be approved, regardless of whether or not DoD had an ACSA with the third party transferee. Effective with enactment of the John S. McCain NDAA for FY 2019, DoD may not provide fuel as a “third party transfer” to a nation with which the Department does not have an ACSA.

I appreciate Congress's continued engagement on the situation in Yemen, and I hope that this response is helpful to you. Please do not hesitate to contact me if I can be of further assistance to you on this or any other matter.

Similar letters are being sent to the other signatories of the March 20 letter.

Sincerely,



William S. Castle  
Principal Deputy General Counsel